

**PRESENTMENT, REPORT, AND FINDINGS OF THE
HABERSHAM COUNTY GRAND JURY REGARDING THE
EVENTS LEADING TO THE SERIOUS INJURY OF BOUNKHAM
PHONESEVANH**

INTRODUCTION

The members of the Grand Jury understand and are aware that this report, findings, and presentment, are not binding legal orders upon any person or organization. However, we have worked diligently and thoroughly for over a week listening to evidence, asking questions, and analyzing this tragic situation not from one particular vantage point, but from all vantage points. To date, we are the only body of citizens who have heard *all* of the evidence and *all* of the facts rather than only portions of it. We have worked hard to attempt to make findings and recommendations that will actually have a positive impact on safety for both law enforcement officers and citizens.

During our over six days, working exclusively on this matter, we have:

- ▶▶ Reviewed and listened to multiple audio recorded interviews, conducted by the GBI and FBI.
- ▶▶ Received live testimony.

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▶▶ Requested to receive, and observed, an in person demonstration and explanation of a distraction device, or “mini flash bang”. We requested this demonstration be done, and it was done, with the exact type of device used in this matter.

▶▶ Requested documents and items of evidence.

▶▶ Requested to and heard from Sheriff Joey Terrell in person.

▶▶ Heard from and been assisted by the District Attorney, Chief Assistant District Attorney, and Assistant District Attorney/ Drug Prosecutor.

▶▶ Heard from and been assisted by District Attorney Peter Skandalakis, who was requested to review the investigation by District Attorney Brian Rickman and his office as an independent prosecutor.

▶▶ Received a statement provided by Alecia Phonesevanh, mother of baby Bou Bou Phonesevanh, in addition to two previous statements made by Alecia and Bounkham Phonesevanh during the events and investigation by the GBI and FBI.

▶▶ Reviewed dozens of photographs, including a 3D imaging scan of the home and scene where the baby was injured done by the GBI.

▶▶ Reviewed and been provided copies of reports, statements, laws, judicial decisions, and numerous written materials.

The Grand Jurors wish to commend the professionalism of those who presented this evidence to us, and those who conducted this investigation. We wish to praise the professionalism, transparency, and straight forward manner in which District Attorney Brian Rickman, Chief Assistant District Attorney Eddie Staples, Assistant District Attorney George Christian and Coweta Circuit District Attorney Pete Skandalakis all conducted themselves. Both the GBI and FBI participated in the investigation and interviews, and it is our opinion that they did an exemplary job of asking the appropriate questions and gathering the relevant evidence. We wish to commend and praise the work of Special Agent Ben Couch of the GBI, in both his investigation and his testimony before us. All questions that we asked were answered, and all evidence we wished to see was presented upon request without hesitation.

We the grand jury have examined closely and in detail all of the events regarding the drug investigation, the securing of a search warrant, the decision to contact Habersham's Special Response Team (we will refer to as S.R.T.), the briefings that took place, the planning, the procedure, and the events that led to a search warrant being executed and a child being seriously

injured. Based upon our work, we make the following findings and recommendations not only for our community, but to the extent that others can learn from this tragedy. It is the sincere hope of the Grand Jurors that this report will be of benefit to all communities, law enforcement agencies, and citizens anywhere who seek the opportunity to learn from this tragedy and to avoid further tragedies in the future.

We wish to express our sympathy to the Phonesevanh family. Nothing can be more difficult and heart wrenching than injuries to one's child. Many of our members are parents, grand-parents, and people who work with children on a regular basis. Our group attempted to try and understand what it must have been like to have gone through and lived through this situation, realizing that it is not possible to know or understand what it truly felt like.

We have also seen and heard the very real sadness, regret, and anguish in law enforcement officers who were involved in these events, and we wish to extend our sympathy also to the law enforcement officers involved. Rather than seeing un-feeling or un-caring robots, what has not been seen before by others and talked or written about, is that these individuals are suffering as well. We have seen and heard genuine regret and sadness on the part of the law enforcement officers involved, and we

think it is fair and appropriate to point out that they are human beings as well.

We the members of the grand jury hope that by making findings and recommendations, and taking the action that we will take, perhaps all of this needless suffering on all fronts can be avoided in our community and in another community somewhere else.

The safety and protection of the public must be the foremost concern together with the safety and protection of law enforcement officers. Policy makers, agency heads, and elected officials should seek to make sure that this is kept in mind at all times. We have requested that the District Attorney ask that our local State Representative read this entire report and findings to the entire Georgia General Assembly at the next legislative session, and have instructed the District Attorney to send a copy to the Georgia Sheriff's Association and the Georgia Association of Chiefs of Police so that perhaps it can be widely spread in the hope that they might find it of value in training and carrying out their important work.

DRUG INVESTIGATION FINDINGS AND RECOMMENDATIONS

The drug investigation that led to these events was hurried, sloppy, and unfortunately not in accordance with the best practices and procedures.

While no member of this grand jury condones or wishes to tolerate drug dealers and the pain and suffering that they inflict upon a community, the zeal to hold them accountable must not override cautious and patient judgment. In our community, the decision has previously been made that joining in a higher level drug investigation effort which is coordinated and supervised by the Georgia Bureau of Investigation, is the best way to ensure that this work is conducted with caution and attention to detail. We are pleased with this decision. We want drug enforcement that is focused on long term and upper level dealers and that is patient, cautious, and thorough. Hopefully, the new model of drug enforcement will seek to provide our community with that, and we encourage other communities in Georgia and our elected officials to support such efforts to standardize and professionalize local drug enforcement units.

Some of what contributed to this tragedy can be attributed to well-intentioned people getting in too big a hurry, and not slowing down and taking enough time to consider the possible consequences of their actions. Without serious supervision and constant vigilance, the work of drug enforcement, like many other jobs, can unfortunately become routine and lead to complacency and lack of attention to detail. The difference in this type of work is that the consequences can be devastating to both citizens and

law enforcement when things go wrong. While no person surely intended any harm to a young child, quite simply put there should be no such thing as an “emergency” in drug investigations. While we as a community want drug dealers held to account, no seizure of evidence or apprehension of a criminal for a drug offense warrants anything but caution and careful planning.

There is an inherent danger both to law enforcement officers and to innocent third parties in many of these situations. The hard work and effort brought to apprehend suspects and seize evidence must always be tempered by the realization that no amount of drugs is worth a member of the public being harmed, even if un-intentionally, or a law enforcement officer being harmed.

SEARCH WARRANTS AND CHILDREN

1. Our recommendation: In the process of gathering intelligence by law enforcement officers as it relates to the presence of children and the fact that “every effort should be made in determining the presence of children” it is recommended that along the entire chain of command from the agency gathering the intelligence to the SRT initiation of a search warrant it should be assumed that children **ARE** present unless strong evidence suggests otherwise. Training should reinforce this perspective and discuss the types of intelligence gathering that can be done to determine the presence of children (i.e. surveillance, running tags, running names with area schools and DFACS, social media search).

LAW ENFORCEMENT OFFICERS INVOLVED IN THE CREATION OF AFFIDAVITS AND SEARCH WARRANTS

2. Our recommendation: Any law enforcement officer that as part of their job description involves the creation of such legal documents as affidavits or search warrants should receive advanced formal instruction and education prior to having such authorization.

OFFICER CONDUCT

3. We the Grand Jury do not presume to fully understand the danger and stresses law enforcement officers constantly encounter while serving the public, but all efforts should be made regardless of the circumstance to maintain composure and professionalism so that such dangerous and stressful situations are not escalated by an officer's poor conduct. We also heard evidence that one agent failed to appropriately act calmly when interacting with the father of the baby. In this emotionally charged situation, the agent should have calmed the situation rather than screaming, even when faced with an understandably upset and irate person. This agent is no longer at the drug unit, and will likewise have no role in the new GBI supervised endeavor. The actions were not criminal, but upon being made known to the appropriate person during the investigation, it appears that action was taken. As with the other personnel matters, this could not be disclosed publicly during the investigation.
4. We recommend that more be done to mandate training specifically in the area of maintaining composure in these situations and on diffusing and de-escalating such situations. We have asked about and been told about classes such as "verbal judo" which seeks to teach law enforcement how to diffuse emotional situations.

SUPERVISOR CONDUCT

5. We the Grand Jury recognize the failures of the supervising agent in providing adequate supervision and direction to the case agent.

JUDGE SIGNING SEARCH WARRANT

6. We the Grand Jurors make no finding that there was any particular failure on the part of the Judge who approved the search warrant. However, we recommend that perhaps policy makers consider whether "no-knock" warrants that are deemed higher risk should be approved only by Superior Court Judges. We understand that the GBI if at all possible presents these warrants to Superior Court Judges. This is not a criticism of Magistrate or other Judges. However, requiring that Superior Court Judges approve these warrants may result in both a symbolic and a practical benefit. First, it signals to all involved that a warrant such as this is different and should be treated as such. Second, it may practically require the situation to be slowed down and not hurried.

CRIMINAL CHARGES

7. The Grand Jurors gave serious and lengthy consideration as to whether to recommend criminal charges against the case agent in this matter. Ultimately, we do not recommend criminal charges based upon the totality of the evidence. However, the case agent, by and through counsel, has voluntarily surrendered the agents Peace Officer Certification and thus ability to work making arrests and writing search warrants. The Grand Jurors unanimously agreed that this was ultimately more fitting of the circumstance and more appropriate than criminal charges and potential jail time.

HABERSHAM SPECIAL RESPONSE TEAM: FINDINGS AND RECOMMENDATIONS

Concerning the Habersham Special Response Team and related issues, we have found no evidence of criminal intent or criminal negligence on the part of any law enforcement officer involved. We realize we are not law enforcement officers or experienced in their field of work, but as citizens we recommend the following be considered, and if safe and appropriate be done:

We recommend a complete review of all policies and procedure of the Habersham Team, and understand that training is already underway with the cooperation of the Georgia State Patrol Team, to assess any areas for improvement and training. We encourage our S.R.T. if possible and deemed appropriate by the Sheriff, to adopt in full a policy similar to that of the Georgia State Patrol. We can make no finding that Habersham's S.R.T. did not have sufficient policies in place, and make no finding that we can

determine any policy was violated. However, we think it would be wise to consider the already existing policies and procedures of the Georgia State Patrol Team to make absolutely certain that everything possible has been done that can be.

Much of the problem in this tragic situation involved information and intelligence. In this matter there is evidence that individuals were asked about children, and signs of children. There is no way it can ever be done for certain, however every reasonable effort should be undertaken to do so. The evidence we heard did not reveal that nobody bothered to ask and inquire as to the presence of children; indeed there is evidence that questions were asked. However, when more can be reasonably done it should be, including surveillance and records checks. In hindsight, and we should point out everything we are doing is with the benefit of hindsight and numerous days to examine this situation, a change could be undertaken specifically with regard to how the question is asked about children when gathering information and making decisions.

S.R.T.: In aligning with GSP S.R.T. policies and procedures and using their tactics and training as a benchmark for the Habersham S.R.T. we hope any deficiencies in the following areas will be immediately addressed and rectified:

8. Sufficient training concerning conducting drug search warrants at night.
9. An adequate amount of SRT mock raids shall be conducted at night and include scenarios where a flash bang device would be appropriate

or inappropriate, with special emphasis concerning "line of sight" and "no-bang" situations.

It is of the opinion of the Grand Jury that a commander of the SRT is in a unique and critical position as an additional check and balance to prevent haste and excessive use of force as well as to reduce risk to the public.

Some key observations by this Grand Jury as it relates to this case are:

10. The essential responsibility of the S.R.T. commander to determine if there is sufficient reliable intelligence in order to evaluate the necessity and timing of serving drug search warrants.
11. The essential ability of the S.R.T. commander to make critical and last moment observations that could influence how he/she will direct and execute an operation.
12. We have specifically reviewed whether criminal charges are warranted against the deputy who tossed the "mini-bang." We have determined that the evidence does not warrant criminal charges.

FLASH BANG CERTIFICATION, GENERAL ORDER NUMBER 4.43 – USE OF FORCE (weapons)

13. The recommendation that certification and re-certification of law enforcement officers using distraction devices such as flash bang grenades shall be required by law. Rather than only policy and procedure, legislators should consider passing a law addressing this issue statewide.
14. We wish to point out that the specific device involved in this matter was a "mini-bang" and not the larger available device.
15. We believe that policies, procedures, and perhaps State law should contain direct and specific reference to the potential for lethality and serious injury that can result from "flash-bang" devices, so that it is more clear where these devices are categorized in the use of force.

First Responders:

16. The Grand Jurors wish to praise the quick action of the two officers with paramedic training and the foresight of the S.R.T. commander to make available an ambulance in case of injuries. This was a positive part of the S.R.T. that was observed by the Grand Jurors. The availability of an ambulance should factor into the decision to initiate a search warrant. S.R.T. gear should include a first aid kit. We

recommend that all county law enforcement officers receive regular and continued training in CPR, First Aid, and any available First Responder and life-saving training that can be reasonably obtained.

17. Funds for Additional Training:

The Grand Jury recommends and asks that the Board of Commissioners seriously consider and approve as much money as is reasonable for both more training and more quality training for county law enforcement. It is the opinion of the Grand Jurors that the minimum 20 hours of training that is required by the State of Georgia should only be a floor and not a ceiling. We believe that the more training the better in terms of the ability to do all we can as a community to prevent further tragedies.

We recommend that whenever reasonably possible, suspects be arrested *away* from a home when doing so can be accomplished without extra risk to law enforcement and to citizens. Going into a home with the highest level of entry should be reserved for those cases where it is absolutely necessary. This is to protect both citizens and law enforcement officers. We have heard evidence that many drug suspects often initially believe a law enforcement entry is in fact a drug robbery. In an instant, they reach for a weapon or take an action that makes a situation escalate. This is dangerous to all involved, and neither the public nor law enforcement officers should be in this dangerous split second situation unless it is absolutely necessary for the protection of the public, which is the highest concern for our law enforcement officers under their duty.

ACTIONS OF NON LAW ENFORCEMENT

CHILDREN PLACED IN DANGEROUS ENVIRONMENT

18. The evidence shows the children were in danger from the moment they moved into the residence and the parents and extended family had some degree of knowledge concerning family members involved in criminal activity that came in and out of the residence. It is unfortunate that the actions the parents took to remove the children from possible harm came a moment too late. There is no available evidence that shows that the parents of the child participated in drug sales at the residence. There is evidence that they were aware of criminal activity and drug sales on the part of persons at the residence, and specifically Wanis Thonetheva. The Grand Jury considered whether any criminal charges were warranted against the parents or any other persons living at the residence, and have found insufficient evidence upon which to base any criminal charge.
19. We find that based upon the evidence there was a basis to seek a "no knock warrant." The evidence shows that Wanis Thonetheva was on bond for drug and gun charges. He also had a previous weapon charge. In addition, there had been a previous incident at the residence in 2013 where it was said that either an assault rifle or a replica of an assault rifle was involved in a robbery. Based upon this evidence, we cannot say that seeking the "no knock warrant" was unjustified.

PERSONNEL ACTIONS

The Grand Jurors inquired into personnel actions taken or not taken as a result of this tragedy. There were legal factors that complicated the ability of such information being available for release to the public prior to our investigation and review. Because there was an on-going GBI/FBI Investigation, we have been informed that the complete investigative file could not appropriately be released to the agency heads involved, so as not to hinder our work. Once the investigation was complete, but before we had met to consider this matter, had the entire file been handed out to agency

heads, the information could have gotten disseminated in a manner that is counter-productive to a fair and thorough review.

We were concerned and made inquiry into any personnel or disciplinary action primarily regarding three persons: the case agent, the case agent's supervisor, and the agent who interacted inappropriately with the father of the child during a heated exchange. With regards to the case agent, when it was agreed by the entities involved that Sheriff Joey Terrell could be made aware of some but not all of the details of what investigators had observed, it was done. Sheriff Terrell, upon being told some of what had been discovered in the investigation, placed the case agent on administrative leave the next morning. Thereafter, the case agent resigned in lieu of possible termination.

Subsequent to that, it was agreed by the entities involved to make Sheriff Terrell and other agency heads aware of concerns about the supervisor of the drug unit. Upon that being done, the supervisor was re-assigned and took a fairly significant reduction in salary.

Subsequent to that notification, the Sheriff of another county was informed and allowed to have knowledge of the issue concerning his assigned agent yelling at the father inappropriately. That agent was re-

assigned and not allowed to apply for or have any role in drug investigations in Habersham County.

The Grand Jury has decided that due to serious and numerous death threats that have been made to multiple persons involved in this situation, we have not named specifically the individuals referenced in this report. We have been made aware that their names will of course at some point become public, but have chosen not to provide the names and give the foolish, ridiculous, and potentially dangerous persons making such threats an easier time of continuing to commit such acts and further taint this process.


CONCLUSION

As ordinary citizens called upon to set aside our own lives temporarily, we have done our best to carry out our function in the most straight forward and transparent manner as we can. Each of us cares deeply about our community, and have done our best to treat this matter with the seriousness it deserves. We wish to point out that we continue to be the Grand Jury in Habersham County for months to come, and thus do not wish to be contacted by the media or others, as we remain subject to recall to hear evidence in this matter and other matters.

The way to avoid tragedies such as this one in the future is to learn from them. The easiest way for a tragedy to repeat is not to learn from it. The

Grand Jurors hope and pray for a full recovery for Baby Bou Bou, and for the entire family including the other children impacted.

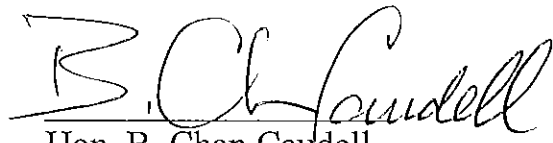
Approved by Vote of the Habersham County Grand Jury:
This 6th day of October, 2014.


Foreperson

ORDER

The foregoing presentment of the Habersham Grand Jury having been returned in open Court, it is hereby ordered that the same be filed by the Clerk of Superior Court. It is further ordered that pursuant to O.C.G.A. 15-12-80 that this presentment may be published in the legal organ of Habersham County.

So ordered this 6th day of October, 2014.


Hon. B. Chan Caudell
Chief Judge of the Superior Court
Mountain Judicial Circuit